

TEXAS DEPARTMENT OF TRANSPORTATION
COMMISSION MEETING

Room 1A.1
200 East Riverside Drive
Austin, Texas

Thursday, November 17, 2011

COMMISSION MEMBERS:

Ted Houghton, Chair
Jeff Austin III
Ned S. Holmes
William Meadows
Fred Underwood

STAFF:

Phil Wilson, Executive Director
John A. Barton, Interim Deputy Executive Director
Bob Jackson, General Counsel
Roger Polson, Executive Assistant to the
Deputy Executive Director
JoLynne Williams, Chief Minute Order Clerk

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
CONVENE MEETING	7
1. Approval of Minutes of the October 27th meeting of the Texas Transportation Commission	14
2. Resolution Recognize Assistant Executive Director for Field and District Operations, David B. Casteel, P.E., upon his retirement from the department with 28 years of service	14
3. Discussion Item Discussion of FY 2011 agency-level performance trends	31
4. Grand Parkway Reports	
a. Annual report on the status of projects and activities undertaken during the preceding 12 months	42
b. Report on the status of procurement for the development, design and construction, and, potentially, financing, operation and maintenance of segments of State Highway 99 (Grand Parkway) in the greater Houston area	51
5. Aviation Various Counties - Award federal and state grant funding for airport improvement projects at various locations (MO)	54
6. Promulgation of Administrative Rules Under Title 43, Texas Administrative Code, and the Administrative Procedure Act, Government Code, Chapter 2001:	
a. Final Adoption	
(1) Chapter 1 - Management (MO) Amendments to §1.82 and §§1.84-1.87 (Advisory Committees)	55
(2) Chapter 2 - Environmental Policy and New Chapter 12 - Public Participation in Landscaping and Litter Removal Repeal of §§2.61-2.71 (Public Participation Programs) and New Chapter 12, Public Participation in Landscaping and Litter Removal,	56

	Subchapter A, Public Participation Programs, §§12.1-12.11	
(3)	Chapter 11 - Design (MO) Repeal of §§11.200-11.205 (Statewide Transportation Enhancement Program) and New §§11.200-11.221 (Transportation Enhancement Program)	56
(4)	Chapter 25 - Traffic Operations (MO) Amendments to §25.1, Uniform Traffic Control Devices (General)	58
(5)	Chapter 25 - Traffic Operations (MO) Amendments to §§25.950-25.957 (Memorial Sign Program for Victims of Impaired Driving)	60
(6)	Chapter 26 - Regional Mobility Authorities (MO) New §26.17, Board Membership after Commission Approval (Creation of a Regional Mobility Authority)	61
b.	Proposed Adoption	
(1)	Chapter 2 - Environmental Policy (MO) Repeal of §§2.1-2.20 (Environmental Review and Public Involvement in Transportation Projects), and §2.44 and §2.48 (Additional Requirements for Certain Types of Transportation Projects); New Subchapter A, General Provisions, New §§2.1-2.14, New Subchapter C, Environmental Review Process for Highway Projects, New §§2.41-2.52, New Subchapter D, Requirements for Classes of Projects, New §§2.81-2.86, New Subchapter E, Public Participation, New §§2.101-2.110, New Subchapter F, Requirements for Specific Types of Projects and Programs, New §§2.131-2.134	64
(2)	Chapter 9 - Contract and Grant Management (MO) New §9.150, Purpose, §9.151, Definitions, §9.152, General Rules for Design-Build Contracts, §9.153, Solicitation of Proposals, §9.154, Protest Procedures, and §9.155, Conflict of Interest and Ethics Policies (New Subchapter I, Design-Build Contracts)	73
c.	Rule Review In accordance with Government Code, §2001.039, Readoption of 43 Texas Administrative Code Chapter 3, Public Information; Chapter 4, Employment Practices; Chapter 6, State Infrastructure	75

Bank, Chapter 9, Contract and Grant Management; Chapter 13, Materials Quality; Chapter 22, Use of State Property; Chapter 23, Travel Information; Chapter 25, Traffic Operations; and Chapter 29, Maintenance (MO)

7. **Internal Compliance Program (ICP) Report** 76
8. **Managed Lanes Project** 77
Dallas and Denton Counties - Concur in the election of a chair and vice-chair of the committee formed pursuant to Transportation Code, §228.013 to make certain determinations concerning the distribution of financial risk, the method of financing, and the tolling structure and the methodology for the I-35E Managed Lanes Project (MO)
9. **Purchase of Building** 79
Travis County - Consider for approval the department's option to assume all rights and obligations under the separated ground leases upon payment in full of the lease with option to purchase contract for the building at 118 East Riverside, Austin, Travis County. Authorize the department to accept a deed of the building from the Texas Facilities Commission (TFC) and authorize the executive director to enter into an assignment agreement with TFC to assume all rights and obligations for the ground lease (MO)
10. **Transportation Planning** 81
Travis County - Rescind a portion of Minute Order 84428, dated April 29, 1986, to release Travis County from certain obligations related to improvements on FM 1826 (MO)
11. **Contracts**
Award or reject contracts for maintenance, highway and building construction
 - a. **Highway Maintenance and Department Building Construction** 82
(see attached itemized list) (MO)
 - b. **Highway and Transportation Enhancement Building Construction** 84
(see attached itemized list) (MO)
 - c. **Award Contract to Second Lowest Bidder** 83
Upshur County - Project RMC6232-61-001- Award of tree and stump removal contract to second lowest bidder

12. **Eminent Domain Proceedings** 87
Various Counties - Authorize the filing of condemnation proceedings to acquire real property by eminent domain for non-controlled and controlled access highways (see attached list) (MO)
13. **Toll Road Project** 27
Fort Bend County - Approve revised terms for the disbursement of financial assistance to Fort Bend County to pay for the construction of 4.2 miles of toll mainlanes extension, frontage roads, and a direct connector on the Westpark Toll Road Phase II, between Grand Parkway and FM 1463 (MO)
14. **Routine Minute Orders** 88
a. **Donations to the Department**
(1) **Project Management Office** - Consider a donation from the Wisconsin Department of Transportation for a department employee's travel expenses to attend the Peer Exchange meeting in Madison, Wisconsin from November 29-December 1, 2011 (MO)
(2) **Houston District** - Consider a donation from Newland Communities for the cost to design and construct three right-turn lanes on US 59 in the vicinity of University Boulevard in Fort Bend County (MO)
b. **Release of Access Rights**
(1) **Baylor County** - US 277, south of FM 422 - Consider the designation of two locations on the frontage road at which access will be permitted to the abutting property (MO)
(2) **Nueces County** - SH 286, north of SH 357 in Corpus Christi - Consider the designation of a location on the highway at which access will be permitted to the abutting property (MO)
c. **Right of Way Dispositions and Donations**
(1) **Bexar County** I-37 between Dawson Street and Nolan Street in San Antonio - Consider the lease of property acquired for highway right of way purposes (MO)
(2) **Orange County** - I-10 at FM 1442 - Consider the sale of surplus right

- of way to the abutting landowner (MO)
 - (3) **Potter County** - Loop 335 from Hester Drive to North Coulter Street - Consider the acceptance of a donation of land for a highway improvement project (MO)
 - (4) **Williamson County** - FM 1325 and SH 45 in Round Rock - Consider the sale of surplus right of way to the abutting landowner (MO)
 - d. **Finance**
Annual report on the status of derivative transactions outstanding
 - e. **Speed Zones**
Various Counties - Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)
- 15. **Executive Session** Pursuant to Government Code, Chapter 551 89
 - b. **Section 551.074** - Discussion regarding the creation of a performance plan for the executive director
- OPEN COMMENT PERIOD** (no commenters) 89
- ADJOURN** 90

P R O C E E D I N G S

MR. HOUGHTON: Good morning, folks. It's 9:01 a.m., and I call the regular November 2011 meeting of the Texas Transportation Commission to order. Note for the record public notice of this meeting, containing all items on the agenda, was filed with the Secretary of State at 3:12 p.m. on November 9, 2011.

Now, as customary, would you please put your communication devices in the silent or turn-off mode.

And if you wish to address the commission during today's meeting, please complete a speaker's card at the registration table which is out in the lobby, and we welcome comments. And that would be yellow on the regular agenda and it would be blue for a specific item. Regardless of the color of card, we do need those filled out, and we would request that your comments be limited to three minutes, except for those members of the legislature which can talk ad nauseam, forever.

See, Fred, I took one from your repertoire. There you go.

(General laughter.)

MR. HOUGHTON: As is our custom, we will hear comments from the commissioners, and I'd like to start at my right, your left, from our newest commissioner, Commissioner Austin from Tyler, Texas.

1 MR. AUSTIN: Thank you, Mr. Chairman.

2 Welcome to everyone this morning. And I've had
3 probably the most frequent question asked: Has it been
4 like drinking water out of a fire hose? Yes, but the
5 nozzle keeps getting a little bit bigger. But I'll say
6 it's been great, I've traveled around a little bit, I've
7 had the opportunity to attend one of the I-69 segment
8 meetings, and it was really fascinating. There's a lot of
9 good people doing work from within the agency and within
10 the public across the state, and that's really exciting to
11 see as we begin to look and listen over the next months.

12 I really appreciate, many of you have come up,
13 offered to help, give assistance and share, give
14 background, and I just want to say thank you to many of
15 you, and for those that I have not had a chance to visit
16 with, I look forward to it. That's it.

17 Commissioner Holmes, welcome back.

18 MR. MEADOWS: Chairman Houghton and my
19 colleagues, I just would like to start off by
20 acknowledging the good work of our new executive director,
21 Phil Wilson, who over the last several weeks, and I know
22 has planned over the next several weeks to travel across
23 the state and meet with a number of our stakeholders, and
24 maybe more importantly at this point, our employees. And
25 I had the opportunity to sit with him during his meeting

1 at the Fort Worth District. Maribel Chavez was our host,
2 and I see her here this morning. Thank you, Maribel.

3 Phil's openness with the employees, his focus,
4 his frankness and his enthusiasm for advancing this agency
5 I think was really welcomed and really well received, and
6 I appreciate him doing that and I applaud your efforts and
7 encourage you to continue it. I think it's working and we
8 thank you.

9 Just one other thing I'd like to note, earlier
10 this week the Fort Worth City Council received a briefing
11 from the North Texas Tollway Authority on the much
12 heralded, much discussed, much debated, much schemed about
13 and collaborated on Chisholm Trail Parkway that this
14 agency played a major role in advancing through the
15 extension of the toll equity loan agreement. The agency
16 had gone into the bond market and executed a sale of over
17 \$640 million in bonds which essentially provided the
18 financing enabling the project to move ahead, very
19 successful bond sale, oversubscribed, moved very well.

20 Notice to proceed has been issued to the
21 contractors and that project is, after 50 years, launched.
22 And that's an amazing accomplishment and it's a real
23 testament to more than anything else just collaboration
24 between partners, partners working together, public
25 entities from cities, counties, the NTTA's leadership and

1 TxDOT's financial support, the citizens of that part of
2 the state are going to be really well served, and by mid
3 2014 they're going to be driving on the facility, just an
4 amazing accomplishment and really a celebration.

5 And I'm really pleased to see today that new
6 chairman of the NTTA, Kenneth Barr, is here. Certainly
7 not new to civic involvement and engagement in the
8 Metroplex, Ken served a mayor of Fort Worth, served on the
9 city council of Fort Worth. We had the opportunity to
10 serve together where he taught me a lot, I know.

11 Kenneth, why don't you come up. If you'll
12 allow Kenneth to say a word too. I'd just like to
13 introduce Kenneth. He's a great friend and he's a great
14 public servant. And we appreciate you being here, and
15 thank you for your work on the Chisholm Trail.

16 MR. BARR: Well, thank you, and thank this
17 commission and the department for all the support and
18 cooperation we got.

19 I would like to correct the record. Mr.
20 Meadows was on the city council when I got there, and if
21 anybody taught anybody anything, it was him teaching me,
22 and it wasn't all good, by the way, but that's another
23 story and we'll pass on that.

24 (General laughter.)

25 MR. BARR: I will just say to Mr. Chairman and

1 members of the commission, this project, as Bill has said,
2 is really a true collaborative effort, and I can't say
3 enough about the role that the commission and the
4 department played in making it happen, the City of Fort
5 Worth, the US DOT and the Federal Highway Administration,
6 the Regional Transportation Council, everybody had a hand
7 in this and it came together in a way that I think is
8 going to be increasingly necessary as we move forward with
9 extremely limited resources and a rapidly growing
10 population. So we really appreciate it.

11 I can't say enough about the cooperation we get
12 out of your district engineers in North Texas and the
13 contributions they make. My commitment to you is that
14 NTTA is going to be a partner with the region, a partner
15 with the Transportation Commission and TxDOT, and we look
16 forward to working with you on other projects in the
17 future.

18 So thank you very much. Appreciate it.

19 MR. MEADOWS: Thank you.

20 MR. UNDERWOOD: I associate myself with my
21 colleague's remarks. I agree with him, that was very
22 impressive work that everyone has done.

23 And I agree with you also, Bill, that Phil has
24 really been traveling a lot. I believe you've been
25 traveling so much, Phil, is that true that you had to

1 introduce yourself to your wife when you got home one
2 time.

3 MR. WILSON: I did. And she liked her first
4 husband better.

5 (General laughter.)

6 MR. UNDERWOOD: I can understand that too, sir.

7 But I would be remiss if I didn't bring up
8 this. I think everybody should know about this, to me
9 this is important because our employees are so important
10 to us and the safety of our employees is so important.
11 The annual safety results of the most safe districts in
12 our TxDOT family, the lowest of all injuries happened in
13 Yoakum District, the lowest lost time injuries were
14 Yoakum, Pharr and Brownwood, Brownwood zero lost time.
15 The lowest production days were Yoakum, Pharr and
16 Brownwood, and the lowest vehicle collisions were Odessa.
17 And so all these men and women, thank you very much for
18 being safe. And for the rest of us, let's be safer.

19 Thank you.

20 MR. HOLMES: Good morning. Nice to be back.

21 MR. UNDERWOOD: Good to have you back.

22 MR. HOLMES: Thank you, Commissioner.

23 Jeff, I wasn't here to welcome you to the
24 commission on your first meeting, but I'm glad to be able
25 to do it on your next one. It's nice to have another

1 member on the I-69 Corridor.

2 I'd like to add my comments. I've gotten,
3 Phil, a number of very good reports on the relationship
4 that you've established with staff, with stakeholders, and
5 it's very encouraging. I think that's doing a great job,
6 and I wanted to acknowledge that.

7 And also, I noticed, Fred, in addition to your
8 comments in respect of safety issues and lost time due to
9 accidents at TxDOT, our overall safety on Texas highways
10 is improving as well, and I think that's a testament to a
11 lot of innovative ideas that David and Randy and John and
12 our district engineers and folks have been concentrating
13 on for the last number of years, and I think all the
14 citizens of Texas probably need to really understand that
15 because it's worked to their benefit.

16 Glad to be back, Chairman.

17 MR. HOUGHTON: Glad to have you back,
18 Commissioner Holmes.

19 I also would like to add to Bill's comments
20 regarding NTTA. Chairman Barr, thank you for the
21 cooperation. It's been a lot of fun getting projects
22 across the goal line, especially up in the Metroplex, and
23 we look forward to doing it in other parts of the state.
24 Thank you for being here today.

25 With that, before we get into the regular

1 agenda, I am asked to give you a paid political
2 advertisement for the Texas Transportation Forum which is
3 in San Antonio on February 15 through 17. And we were
4 thinking last night, Commissioner Meadows, it was on
5 Valentine's Day, but we didn't think Coby would do
6 something that crazy as to have something on Valentine's
7 Day. But those who'd like to attend, it's in San Antonio
8 this year on the 15th through the 17th, and registration
9 is available online until December 15.

10 Now, the first thing before we get into the
11 regular agenda, our first order of business is to approve
12 the minutes of the October 27 meeting. Members, the draft
13 has been provided to you in your briefing materials. Is
14 there a motion?

15 MR. UNDERWOOD: So moved.

16 MR. AUSTIN: Second.

17 MR. HOUGHTON: All in favor?

18 (A chorus of ayes.)

19 MR. HOUGHTON: Thank you.

20 Before I turn the agenda over -- well, I think
21 what we'll do is, Phil, we'll let you do the David Casteel
22 recognition, and then we're going to move, with the
23 permission of the commission, to item 13, Fort Bend
24 County, up to number one so Commissioner Meyers can get
25 back to his duties in the Fort Bend area.

1 MR. WILSON: Thank you, Chairman.

2 Our first agenda item today is a resolution
3 recognizing David Casteel, the former assistant executive
4 director for Field and District Operations. David retired
5 October 31 and we're glad to have him back with us today.

6 David, I would like to invite you up to the
7 podium and I will read this resolution recognizing your
8 service.

9 "Whereas, the Texas Transportation Commission
10 takes great pride in recognizing David B. Casteel, P.E.,
11 for his outstanding service in the Texas Department of
12 Transportation after a distinguished career of more than
13 28 years;

14 "And whereas, as assistant executive director
15 of Field and District Operations since 2008, David has
16 overseen the agency's 25 districts and four regional
17 support centers, coordinating their activities to ensure
18 funds are used to maximum efficiency;

19 "And whereas, David, a native of Graham, Texas,
20 earned his bachelor's and master's degrees in civil
21 engineering from Texas A&M University, is a graduate of
22 the Governor's Executive Development Program at the Lyndon
23 B. Johnson School of Public Affairs at the University of
24 Texas at Austin, and has been licensed as a professional
25 engineer since 1989;

1 "And whereas, he began his TxDOT career in 1983
2 with the Wichita Falls District as a summer hire in the
3 Graham Area Office, later serving as the Abilene
4 District's area engineer in the Big Spring Area Office,
5 and director of transportation and development;

6 "And whereas, he was named Childress district
7 engineer in 1997, Corpus Christi district engineer, and
8 San Antonio district engineer in 2003;

9 "And whereas, TxDOT is a better agency today
10 thanks to his outstanding leadership.

11 "Now, therefore, be it resolved that the Texas
12 Transportation Commission does hereby extend its sincerest
13 best wishes to David B. Casteel, P.E., in recognition of
14 his professional achievements in a career of loyal service
15 on behalf of the State of Texas and its citizens.

16 "Presented this day, Thursday, the 17th of
17 November 2011."

18 (Applause.)

19 MR. HOUGHTON: This is from your senator in
20 your hometown, Senator Wentworth, Senate of the State of
21 Texas. We've got all sorts of goodies.

22 MR. HOLMES: A flag that was flown over the
23 State Capitol.

24 MR. AUSTIN: A Senate proclamation.

25 MR. UNDERWOOD: This is also from the House,

1 State Representative Drew Darby.

2 (Pause for presentation and photos.)

3 MR. WILSON: And right now we also have some
4 gifts that the staff would like to present.

5 MR. BASS: Thank you, David. Your friends in
6 the administration have a couple of gifts to give to you,
7 and as you and others will witness, you can see that I had
8 very little say into what we got you.

9 The first of the pictures we have to
10 commemorate your time at A&M University and the boots to
11 go with it. Apparently the next one depicts an event that
12 is of such a rare occasion that it's been memorialized.
13 For those of you who can't see, it's a particular Longhorn
14 steer with the numbers 13-0 branded on its side, that
15 later became known as Bevo, celebrating one of the Aggies'
16 victories over Texas.

17 I've had the pleasure to work with David and
18 see his work every day since 2008. Betsy, I think all of
19 us want to thank you for allowing, loaning David to us.
20 His drive and dedication to the department is unmatched.
21 I know it was a lot of hours, a lot of moves, I think 15
22 different houses over the years -- 22? Who's counting.

23 It's very much appreciated. We are a better
24 agency and we all live in a better state because of
25 David's service, and we thank you both very much.

1 (Applause.)

2 MR. HOPMANN: Mr. Casteel, we're not done quite
3 yet.

4 MR. CASTEEL: They've got work to do.

5 MR. HOPMANN: Well, I know they have work to do
6 but they're making time for you and Betsy, and that's
7 important because you've made time for us for over 28
8 years and we appreciate you.

9 As the district engineers know -- we have some
10 of them here to help celebrate, but as they know and as
11 you know, we gathered some monies together and Lonnie
12 Gregorcyk and I kidnapped you one day and we took you down
13 to Cabella's and we got you something that you can enjoy
14 for many years to come. We got him a nice Browning
15 Medallion 300 Win. Mag. Rifle with a nice scope and all
16 the accessories to go with it. Have you had a chance to
17 try it out?

18 MR. CASTEEL: Not yet.

19 MR. HOPMANN: Not yet. I'm surprised.

20 There's a little story here. We took him down
21 to Cabella's, and in David Casteel style, the first place
22 is the used gun rack and he picks out this beauty, it was
23 a hundred bucks, and we told him we had a little bit more
24 than that, so we went to the new gun rack and that's where
25 we did our shopping. You can see how proud he is in that

1 picture; I just wanted to share that with you.

2 (General laughter.)

3 MR. HOPMANN: David, we appreciate your
4 leadership for all these years and for what you've done
5 for us, and we do have another small memento here. This
6 is again from your district engineers. It's a Moore
7 Maker, if you're familiar with that. It's from Matador,
8 Texas. Do you know where that is, Commissioner Underwood?

9 MR. UNDERWOOD: Sure.

10 MR. HOPMANN: I bet you do.

11 And we know you can't carry that rifle with you
12 every day, but we got you this pocketknife that hopefully
13 you can carry with you every day to remember us and
14 remember your friends and family here at TxDOT, from the
15 district engineers. And we have it engraved, it's got two
16 blades on it: one blade says "David Casteel 2011" and the
17 other blade is engraved with "In remembrance of your
18 district engineer friends." So I wanted to present this
19 to you as well as a card to go along with that from some
20 of your other friends and family here at TxDOT.

21 And I just wanted to voice a few personal
22 comments that you've done such a great job for TxDOT for
23 all these years, and I know as you've been in your final
24 position here at TxDOT as part of the administration that
25 some really great things have been accomplished under your

1 leadership. And just to mention a couple of them, we have
2 produced in the last several years about 30 percent more
3 projects in the last several years than what we were
4 planning on doing, and we've been able to use every
5 dollar, every penny that's available to TxDOT and to put
6 it out there on the roads for the citizens that travel the
7 great State of Texas to enjoy and have the safety
8 improvements associated with the transportation system
9 that we operate and maintain for them, and we did that
10 under your leadership.

11 And you also emphasized and focused us on
12 operational efficiencies for many years which ultimately
13 saved the taxpayers of Texas hundreds of millions of
14 dollars, and then you made that money get reapplied to the
15 roadways with the phrase that you coined "Pennies to the
16 Pavement" and as a result of that, the pavement scores
17 have gone up in Texas in the last several years, as
18 revenues have declined and as the pavement condition
19 models have indicated they would decline as well. But
20 with your leadership you defied that modeling effort and
21 the citizens of Texas enjoy a better roadway system as a
22 result.

23 So with that, I'll conclude my remarks and
24 others may want to say some things, but I'm going to hand
25 this off to you.

1 (Applause.)

2 MS. CHAVEZ: I give myself credit for having
3 discovered David, but there's something a little wrong
4 with this picture: he's retired and I'm still here. So
5 I'm not real sure what that says of me.

6 And I had to dig really deep into my closet --
7 not really -- to find this color and it's just for you,
8 David, just for you. I tried really hard to get him to
9 understand the value and the beauty of that burnt orange
10 color, but he never got it. So the one thing I was never
11 able to teach David was how to dress properly, but we'll
12 keep working on that one.

13 (General laughter.)

14 MS. CHAVEZ: And I have to admit to you, David,
15 and my peers and I, we talk about this pretty regularly,
16 we're all at different levels of withdrawal. We keep
17 waking up at 3:00 in the morning or on Saturdays or
18 Sundays and saying, There's something wrong with the
19 Blackberry, it's not going off, or maybe the system has
20 gone down because I don't have a message from David. And
21 so we're all at different levels of withdrawal. I can't
22 put mine down quite yet because I keep thinking I'm going
23 to get that message from David about that pothole, and
24 then I get to tell him that pothole is Bill Hale's
25 pothole, it's not my pothole.

1 (General laughter.)

2 MS. CHAVEZ: And you know, the one miracle that
3 David performed and Randy alluded to is "Pennies to the
4 Pavement" and how all of us were able to raise our
5 pavement scores; the one miracle that David performed was
6 even Dallas's pavement scores increased/improved. So the
7 one thing that you have to worry as a commission is that
8 you're going to have to find another miracle worker
9 because we can't let Dallas fall behind again.

10 So thank you, David, and more importantly,
11 thank you for being my friend and for all the support
12 through the years. Thanks.

13 (Applause.)

14 MR. JORGE: Just real quick, I know this is a
15 big group. David made a trip, the last time he went to
16 the Valley was a couple of years ago and that was the last
17 time he went because we were driving together and I made
18 him drag a dead deer off the road and then we dragged a
19 dead bobcat off the road. And David said, I think you're
20 taking care of business here; I don't need to visit.

21 (General laughter.)

22 MR. JORGE: David, thanks for everything. I've
23 enjoyed working with you in South Texas for so many years,
24 and best of luck, and you always have a friend in the
25 Valley.

1 MR. HOUGHTON: You're up, Bill.

2 MR. MEADOWS: Well, I've got to sit down, this
3 might be a long speech. You all might want to sit down.
4 David, you stay there.

5 You know, many of you all in this room had the
6 opportunity to attend a retirement for one of our
7 distinguished employees earlier this year and you might
8 recall that it was a western-themed event, and the really
9 cool thing about it was that so many of our employees are
10 just solid Texans, they understand western wear, they
11 understand the art of wearing western wear. And I will
12 tell you I'm sure others in this room had the same
13 impression, and it was one of shock when I saw Casteel,
14 who grew up in Young County, Texas. You would think that
15 a man who grew up in Young County, Texas, would know what
16 kind of cowboy hat to buy and wear.

17 Now, I don't know if any of you remember that
18 hat that evening, but it was an embarrassment. It was one
19 of those little bitty hats that was about two hat sizes
20 too small, kind of sat up on top of his head, and I went
21 over and being a sensitive kind of guy, I said, David, let
22 me talk to you about that hat. And David said, Yes, you
23 like it? I said, Oh, yeah, everybody likes it, that's why
24 everybody is smiling, they like it so much. And he
25 proudly told me that he bought it at a garage sale. And I

1 thought, okay, that fits into everything else. He's the
2 same guy that was at a congressional hearing testifying
3 and I asked him how it was going, and he texted me back
4 and he says: Dark suit, brown boots, got it covered.

5 (General laughter.)

6 MR. MEADOWS: So the commission would like to
7 make a presentation to David, hoping that when he drives
8 to the feed store now that he's a full-time rancher, that
9 people won't be laughing behind his back and he'll look
10 like a real rancher out there in Young County.

11 (Mr. Meadows presented Mr. Casteel with a
12 cowboy hat, followed by applause.)

13 MR. UNDERWOOD: Finally get to wear the white
14 hat.

15 Also from the commission, because we heard
16 about your hunting expertise and whatnot, and everybody
17 realizes there are seasons in hunting, right, and he has a
18 new rifle but you want to use that more than just one
19 season or so. Correct? Well, the commission, with my
20 advice, by the way, we provided David with a night vision
21 laser. You can mount this on your rifle and you can hunt
22 year round. Just mount it on your scope and you can get
23 them up to 400 yards out, and you'll really enjoy this for
24 hog hunting, for the record.

25 MR. CASTEEL: Wow. Are these legal?

1 (General laughter.)

2 MR. UNDERWOOD: Is Bob Jackson here?

3 MR. MEADOWS: Tell them you know Fred
4 Underwood.

5 MR. UNDERWOOD: That will get you in the penal
6 institution.

7 (General talking and laughter.)

8 MR. HOUGHTON: The floor is yours, David, for
9 rebuttal. Betsy, do you want to talk?

10 MR. UNDERWOOD: Notice he let her carry all the
11 other gifts but he kept the scope. I just want you to
12 notice that.

13 MR. CASTEEL: Mr. Chairman and members of the
14 commission, thank you so very much, and you are great
15 friends, and Mr. Austin, if you need some advice, I have
16 some advice.

17 MR. AUSTIN: We'll talk.

18 MR. CASTEEL: At the right time.

19 And thank you so much again. It's been a
20 wonderful career. I appreciate every opportunity. I
21 absolutely love TxDOT and I know Phil is going to do a
22 great job.

23 Betsy and I, we've had a long road together.
24 We met in kindergarten, for the record. Yes, awww.

25 (General laughter.)

1 MR. HOUGHTON: You're really a sentimental guy.

2 MR. CASTEEL: You bet.

3 And we got our first job when Arnold Oliver
4 hired us, and then Maribel hired me, and then Bill Burnett
5 moved me to Childress, and Wes Heald moved me to Corpus,
6 and Mike Behrens moved me to San Antonio and he let me do
7 Laredo while I was in San Antonio, and then Amadeo Saenz
8 moved me up here and I got to work with him and Mr.
9 Simmons and it was a great experience and I really
10 appreciate everything. We got to work on lots of great
11 projects in many parts of the state, met many wonderful
12 people, both in the department, in the communities, in the
13 contracting community and in the consultant community, and
14 we wouldn't trade it for anything.

15 And like you said, I think you mentioned we
16 moved several times, lived in a bunch of houses, and while
17 I had a great career with just one job in lots of
18 different places, Betsy had to have ten different jobs
19 during that time period. And she's probably the best
20 teacher in Texas, and I know I've made enemies in every
21 city I've lived in because I took her away and the
22 children and the parents were mad at me every time. She's
23 the best teacher in Texas, and I really want to appreciate
24 her.

25 Thank you.

1 (Applause.)

2 MR. HOUGHTON: Well, there's not much of an
3 encore. Thank you, David, and thank you, Betsy, very much
4 for coming here today.

5 Phil, I will turn it over to you for the
6 balance of the agenda.

7 MR. WILSON: Thank you, Chairman.

8 Commissioners, if you will go to page 13, we
9 are going to move up the agenda item 13.

10 MR. HOUGHTON: Item 13.

11 MR. WILSON: Item 13 will be presented by Chief
12 Financial Officer James Bass revising the toll equity
13 agreement with Fort Bend County on the Westpark Toll Road.

14 MR. BASS: Good morning. For the record, I'm
15 James Bass, chief financial officer at TxDOT.

16 This past August the commission approved a
17 minute order of a toll equity agreement between the
18 department and Fort Bend County that was a total of \$40
19 million, \$4 million per year over a ten-year period, that
20 was related to the extension of the Westpark Toll Road
21 Phase II. In that original agreement the \$4 million per
22 year for ten years was not going to begin until one year
23 after completion of the project, somewhat modeled on our
24 pass-through agreements. After that minute order was
25 passed and continuing discussions with the county, it

1 works better within their financial plan if we are able to
2 do that upon completion of the project, and that's the
3 amendment and the revision that this minute order would
4 make.

5 Staff would recommend your approval and be
6 happy to answer any questions you might have.

7 MR. HOUGHTON: We have a speaker, Commissioner
8 Meyers, Fort Bend County.

9 MR. MEYERS: Thank you, Mr. Chairman.

10 On behalf of Fort Bend County, we want to thank
11 the commission for this project. Particularly we want to
12 thank Mr. Bass and Mr. Barton, the TxDOT staff. They
13 worked very diligently on this together with us. And I
14 would particularly want to thank Commissioner Ned Holmes
15 for his able assistance in getting this project completed.

16 This project, in your minute order it says
17 4-1/2 miles which is accurate from the standpoint of the
18 participation between TxDOT and Fort Bend County, however,
19 the project and this agreement requires Fort Bend County
20 to build another four miles, so the total project is
21 actually 8-1/2 miles, and this will be serving what we
22 call the Katy-Fulshear area which just happens to be,
23 obviously, in my precinct, but also happens to be the
24 fastest growing area in the Houston region. We sold 1,200
25 new homes in that area in the last year. We anticipate

1 there will be about 1,500 homes, so a two-lane farm-to-
2 market road is not quite enough to serve that kind of
3 growth out there, so we certainly appreciate TxDOT's
4 participation in this project.

5 And Fort Bend County will be, over a period of
6 years contributing about -- this is about a \$140 million
7 project and Fort Bend County will be contributing about
8 \$100 million between it and its toll road authority. So
9 we certainly appreciate this opportunity to make this
10 improvement.

11 Thank you.

12 MR. HOUGHTON: Comments?

13 MR. HOLMES: Just a quick comment. James, when
14 you presented that you did it so quickly and it sounded so
15 easy, but in point of fact, Commissioner Meyers has been
16 working on this for a long time, and it was a pretty
17 arduous process over a project that in the context of Fort
18 Bend is really important but it's not that big of a
19 project from a financial standpoint, but it's a huge
20 project from a quality of life and the ability to relieve
21 congestion for these folks to get home.

22 But I think it's gone on for what, 18 months or
23 so? Is that about right? Two years, three years, five
24 years? It was a concerted effort. I appreciate the
25 diligence, James, from you, and from John Barton and

1 Commissioner Meyers.

2 MR. HOUGHTON: Any other questions or comments?

3 MR. HOLMES: I would move approval.

4 MR. UNDERWOOD: Second.

5 MR. HOUGHTON: All in favor?

6 (A chorus of ayes.)

7 MR. HOUGHTON: Passes.

8 Commissioner Meyers, thank you.

9 MR. WILSON: We'll go back to item 3. Next up
10 on the agenda is a discussion on the FY 2011 agency-level
11 performance trends which will be headed by Rick Collins
12 interim director of the Strategic Planning and Performance
13 Management Office.

14 MR. COLLINS: Good morning. For the record, my
15 name is Rick Collins and I'm here as the interim director
16 of the Strategic Planning and Performance Management
17 Office.

18 Over the last fiscal year the agency has
19 continued to monitor its progress by tracking key
20 performance indicators and posting results on TxDOT
21 Tracker. The Tracker can be located on our website and
22 gives the public an opportunity to see how we are managing
23 our business.

24 Today we'd like to take this opportunity to
25 quickly review some fiscal year 2011 year-end results in

1 five categories, and those will be construction on budget,
2 design on time, vehicle miles traveled, fatality rate, and
3 TxDOT on budget. I will then share with you some of our
4 plans for moving forward, and in addition, I'd like to get
5 any feedback you may have regarding our performance
6 measures.

7 Before I get started on these, here's kind of
8 how I'm going to walk through all of them. I'm going to
9 talk about what's important, what was the target, what's
10 the result, and what does this indicate and what's our
11 response.

12 I do have a caveat, also before I get started,
13 I'm in no way the expert on all of these performance
14 measures but I am confident that there are people behind
15 me that could answer some detailed questions if you have
16 them regarding some of these specific performance
17 measures.

18 The first one I want to talk about is the
19 construction on budget. This is an important measure as
20 we look to control our costs and to manage financial
21 resources and to, quite frankly, improve construction
22 project on budget delivery.

23 A project is considered on budget if it's
24 completed for an amount within 10 percent of the original
25 contract budget identified at the contract award. The

1 target for fiscal 2011 was to complete 90 percent of the
2 construction projects on budget, the result was 89.2
3 percent. What that means is out of the 858 projects
4 completed, 765 of those were completed on budget. This
5 doesn't show up on there, but for fiscal year 2011, we had
6 a total awarded contract amount of \$3.69 billion and a
7 total work to date would be \$3.81 billion. That's within
8 3 percent overall when you look at the total budget for
9 projects completed that particular year. And as you can
10 also see from the trend there, definitely making some
11 improvements in this area.

12 Next one I want to visit with you about is the
13 design on time. This is, of course, important for
14 management for our limited financial and engineering
15 resources. It's also important to the public that the
16 department delivers design plans on schedule.

17 Project design plans are considered complete
18 when the design plan specifications and estimate have been
19 completed and the right of way and utility acquisition and
20 adjustments have progressed such that construction can
21 proceed and all necessary permits have been obtained. The
22 target for fiscal year 2011 was 90 percent of design
23 projects completed on time, the result was 60 percent
24 which works out to 468 out of 784 total projects. This is
25 16 percent less than the fiscal year 2010 result of 76

1 percent and 30 percent less than our goal of 90 percent
2 for fiscal year 2011.

3 Some of the reasons for this, you're looking at
4 a relatively new process, you only see two years covered
5 there. We've got some new processes in place, the P-6 is
6 still getting up and running, so I think you're going to
7 continue to see tremendous emphasis in this area and
8 you'll see improvement as time goes by.

9 Next one is the vehicle miles traveled. This
10 allows us to see the use of the Texas highway system.
11 There really is no target for this since it is an it-is-
12 what-it-is measure. This simply looks at the vehicle
13 miles traveled on our system.

14 The most current data available is for calendar
15 year 2010 and out of that 234 billion total miles traveled
16 on all roadways in Texas, the VMT on state-maintained
17 highways was 172 billion. TxDOT will continue to track
18 VMT annually to measure the use of the state's highway
19 system.

20 Next measure I want to visit with you about is
21 the fatality rate. TxDOT uses a fatality rate to measure
22 road safety. The target was 1.36 fatalities per 100
23 million vehicle miles traveled. The calendar year 2010
24 result was 1.29 fatalities per 100 million VMTs.

25 The fatality rate, as you can also see, has

1 been declining. Some of the reasons for this decline
2 include construction of \$1.2 billion worth of safety bond
3 projects, implementation of the Texas Strategic Highway
4 Safety Plan, and improved CRIS crash records data system
5 which allows TxDOT to use data to make better decisions
6 and a steady increase in statewide safety belt usage which
7 now sits at over 93 percent. This will, of course,
8 continue to be a focus and emphasis on both the safety
9 construction aspects as well as the behavioral aspects of
10 traffic safety.

11 And you know, on this particular performance
12 measure I've just got to say this. What this boils down
13 to is that there are people that are able to be with their
14 loved ones today as a direct result of some of the
15 initiatives of this agency, and that's really what it's
16 all about. I just have to add that one to this particular
17 measure.

18 TxDOT on budget, the measure is to compare
19 actual expenditures to appropriated amounts in the General
20 Appropriations Act. The target was set at plus or minus 3
21 percent between actual and budgeted amounts. With 100
22 percent of the appropriation year 2011 lapsed, TxDOT has
23 expended 82.6 percent of its appropriations.

24 I want to add on this particular measure TxDOT
25 obviously monitors its budget on a monthly basis, its cash

1 forecasting so that we do stay within the money spent.
2 This, quite frankly, is a performance measure or a trend
3 that the agency needs to look at to see what kind of value
4 its giving, is it really telling us anything, because
5 there are some things that are out of the agency's
6 control. An example, I think, was some of the Proposition
7 12 funds. In addition, it's over a long period of time
8 since you're talking about appropriation year, so I think
9 we need to really look at this particular performance
10 measure.

11 MR. HOUGHTON: Would a better measure be
12 obligated or spent?

13 MR. COLLINS: I'm calling for my reinforcement.

14 MR. HOUGHTON: Bass, is that your
15 reinforcement?

16 MR. BASS: Good morning. Again for the record,
17 I'm James Bass, chief financial officer at TxDOT.

18 I think to answer your question would be what
19 is the purpose or the goal of the measure, what are we
20 trying to track. For example, we often look at our funds
21 as operating funds and contracted funds, and so if the
22 focus was on our contracted funds, then I would say yes,
23 obligated rather than expended would be a more appropriate
24 measure to get to what you're trying to capture. If it's
25 how does the department manage the funds that are more

1 truly under our control -- as you know, on our contract
2 dollars if it rains or if it's a drought, our expenditures
3 can rise and fall regardless of how we're managing it --
4 so it's really the goal of what you're attempting to
5 measure.

6 One of the things I would point out here, and
7 it may have been said earlier, but even once we reach
8 August 31 in a year and that year has been closed out, in
9 the budget world four, five, six months later when we get
10 a bill for services received in August, those charges go
11 back to the year in which the goods or service was
12 received. So over time you'll actually see the
13 expenditures increase.

14 The other one is I'd point out for 2011 in the
15 math, if you recall in our appropriation for 2011 the
16 department received \$1 billion for Proposition 12 for
17 deposit into the State Infrastructure Bank. It had a
18 second step in the process that we needed to go back to
19 the Legislative Budget Board to get approval for that; we
20 never received that approval. That billion of budget is
21 in the math for this 82.6 percent that it was appropriated
22 but we were never fully given the right to spend it. As
23 an example, if you just took that billion dollars out, the
24 82.6 rises to 93 point some percent.

25 So I apologize for the long answer. Really, I

1 think the focus needs to be what are we trying to measure:
2 is it the commitment of contracting dollars or the
3 internal operations and management of the department on
4 our day-to-day operations. I think they may be separate
5 and may need separate measures.

6 MR. HOUGHTON: It's not a true representation
7 to our friends across the street when you look at those
8 types of numbers.

9 MR. BASS: And I understand the intent. And
10 another example is in 2010 if you look at the
11 Appropriations Bill, so you can tie back the budget amount
12 to the Appropriations Bill, it includes in the TxDOT 2010
13 appropriation a full year of budget for those functions
14 that were transferred to the Department of Motor Vehicles,
15 so it's on one side of the equation but on the
16 expenditures we don't have all of those years.

17 And so I think, as Mr. Collins said, there's
18 some work that can be done on this particular measure.
19 Again, I think it may need to be split into two and really
20 have a discussion on what we're trying to track, what
21 we're trying to measure and then build the performance
22 measure around that.

23 MR. HOUGHTON: Any other questions?

24 MR. HOLMES: There's too much noise in these
25 numbers.

1 MR. HOUGHTON: Yes, way too much.

2 MR. UNDERWOOD: One quick. On the design on
3 time, the results were 60 instead of 90, Rick?

4 MR. COLLINS: Yes, sir.

5 MR. UNDERWOOD: Is that also because of Prop 12
6 money that showed up, or are we just not being realistic
7 when we make our projections?

8 MR. COLLINS: I think Maureen Wakeland is back
9 there too, but the way I understand it is that we did get
10 some additional projects over the fiscal year which
11 changed some of the scheduling in order to get some of
12 those projects ready to letting. I think that did have
13 some impact as well.

14 MR. UNDERWOOD: Okay. Thank you.

15 MR. AUSTIN: Mr. Chairman, I do have one more
16 question.

17 On the fatality rate, what is the national
18 average?

19 MR. COLLINS: It's over what ours is. Don't
20 know what that is right off but we can certainly get that
21 to you.

22 MR. AUSTIN: I think that's a good benchmark
23 because what we're doing, and congratulations to
24 everybody, I think it's a great success.

25 One last question. On the construction on

1 budget, there's obviously been a lot of improvement there.
2 What are the one or two things that you have really put in
3 place to be more accurate with this?

4 MR. COLLINS: To be more accurate?

5 MR. AUSTIN: What have you learned from this
6 looking back? There's been a lot of improvement.

7 MR. COLLINS: Yes. And perhaps Ken Barnett of
8 the Construction Division can help me with some of the
9 details of this particular one, but I think there's been,
10 quite frankly, just a lot of emphasis on it.

11 Here's my help.

12 MR. BARNETT: For the record, Ken Barnett from
13 the Construction Division.

14 Some of the things that we put in place, in
15 fact, some of the things that Mr. Casteel put in place had
16 a lot to do with it. I think in years past the districts
17 didn't always have to account for that extra money on
18 projects, in recent years we have started to do that, so
19 they have to identify the funding source for that extra
20 work they need to do on the projects and I think that had
21 a big effect on our ability to manage those projects a
22 little bit better. I think that single factor was the
23 biggest.

24 MR. AUSTIN: Thank you.

25 MR. HOLMES: One other question, Rick. Do we

1 actually break down on fatality rates between the
2 interstate system and the balance of our system?

3 MR. COLLINS: I'm sure that they have those
4 numbers, I couldn't tell you what they are right off, but
5 I'm sure those numbers can be determined.

6 MR. HOLMES: And further on that point, when we
7 put Super Twos in, I wonder what the impact on the
8 fatality rate is by the addition of the Super Twos.

9 MR. COLLINS: I think it's going to have a very
10 positive effect. Now, what those numbers will be remains
11 to be seen, but when we did the research on the Super Twos
12 several years ago, it showed some very positive impacts in
13 the use of those, both from expenditure of funds and from
14 a safety standpoint. So I look to see positive results
15 from that, personally.

16 MR. HOLMES: If you have any data on that, I
17 would appreciate your forwarding it along. Thank you.

18 MR. COLLINS: Yes, sir.

19 I appreciate you bearing with me as the folks
20 that really knew the story behind this came up. I think
21 that's an important part about the overall performance
22 measures. The Strategic Planning and Performance
23 Management Office consolidates all that information,
24 you've got a lot of folks that are responsible for making
25 these results happen, so thank you for your patience and

1 allowing me to have the folks come up and help me out so
2 you got the best answer you could.

3 Concluding here, we're talking about the
4 department currently reports on a broad array of
5 performance measures, I think we've got about 70 of them,
6 and we're going to publish those fiscal 2011 year-end
7 performance results on TxDOT Tracker very soon as we get
8 all the information in there. We are going to be working
9 with the executive administration to identify those key
10 performance indicators to monitor at the agency level for
11 fiscal year 2012, and as you heard the discussion on the
12 TxDOT on budget, there's probably some measures we need to
13 look at to see what they're doing for us or to us,
14 perhaps, and really hone in on some measures that are
15 meaningful and will add value.

16 In addition, we're beginning to lay the
17 groundwork for the development of the 2013-2017 TxDOT
18 Strategic Plan and the identification of key performance
19 indicators in support of the agency's mission and goals is
20 a crucial part of this process as we work to become a more
21 performance-drive organization.

22 And I will close by requesting any feedback on
23 the agency performance results presented to you today or
24 any other comments you may have regarding the frequency of
25 these types of briefings and any particular information

1 you'd like to see. Thank you.

2 MR. HOUGHTON: Thanks, Rick.

3 Any other questions of Rick? Thanks.

4 MR. COLLINS: Thank you.

5 MR. WILSON: Moving on to item number 4, there
6 are two reports that relate to the Grand Parkway in
7 Houston. First up is the annual report from the Grand
8 Parkway Association. I'll ask the executive director of
9 the Grand Parkway Association, David Gornet, to come up
10 and introduce that report.

11 MR. GORNET: Good morning, commission members,
12 Mr. Chairman, Mr. Director. My name is David Gornet. I'm
13 the executive director of the Grand Parkway Association,
14 and today is the day for our next annual report on the
15 activities of the Grand Parkway and its direction that
16 it's taken in the past year, the direction that we're
17 heading in this coming year, and other activities that we
18 would see in the future.

19 I do have some good news to report. I'll open
20 with the best news is that yesterday there was a hearing
21 in U.S. District Court in Houston regarding an injunction
22 that was filed by the Sierra Club for the Corps to rescind
23 its wetlands permit for Segment E that would cause the
24 cessation of construction activities. That injunction was
25 denied. The judge came back after lunch and expressed

1 concern that the Sierra Club had not met the burden of
2 proof that was necessary for an injunction to be ordered,
3 and so he denied it, and we continue with construction on
4 Segment E. Our contractors have already been on the
5 ground for two months, they will be moving forward, and
6 within the next two years we'll be driving on Segment E.

7 So that's a good result that came out of that,
8 and we appreciate the efforts of the U.S. DOJ, the
9 attorneys for Federal Highways, the attorneys for the Army
10 Corps of Engineers, as well as our state attorney
11 general's office and the efforts they put together to put
12 the presentation together that convinced the judge of the
13 validity of our arguments.

14 The Grand Parkway is, as many of you know --
15 and I would welcome the opportunity to brief you,
16 Commissioner Austin, to discuss this in great detail if
17 you wish -- is a loop around metropolitan Houston. It's
18 more of a large C, and as I remind everybody when we
19 discuss the complexity of the project is that it's like
20 trying to build a new road from Houston to San Antonio and
21 just going around metropolitan Houston, and so it is a
22 very complex project with many issues and challenges that
23 face us as we develop this.

24 Segment D and I-2 are open to traffic on the
25 west and the east sides of town. We have Segment E under

1 construction from I-10 to 290; that's about 15 miles. We
2 have additional mileage from 290 to 249 to 45 North to 59
3 North that are already to go and we're investigating the
4 financing and design alternatives on those, and we have
5 some additional 92 miles that are under study.

6 During fiscal 2011 we advanced Segment B. We
7 have a DEIS that continues to be under review by the state
8 and by Federal Highways. Likewise Segment C, we were
9 asked to revise the DEIS. We submitted supplemental
10 information that was approved by Federal Highways and
11 they're considering approval of the final environment
12 impact statement.

13 Fort Bend County, in their assertion of
14 primacy, has met their goals of having construction
15 underway within two years of primacy. They have contracts
16 issued West Airport and the River Park overpasses, they're
17 doing engineering for the balance of six overpasses, but
18 those contracts were let in July and construction began in
19 August.

20 Segment E, construction contracts were awarded
21 in 2011, and G our ROD was approved, H and I-1 we held
22 public hearings in August, we had the draft environmental
23 impact statement approved in June.

24 In 2012 we're anticipating more activity,
25 obviously: Segment B, the DEIS being approved; Segment C

1 the DEIS being approved; Segment F-1, F-2 and G will be
2 going through processes of selecting a delivery model --
3 I'll discuss that in greater detail. TxDOT has already
4 done a number of activities regarding the issuance of an
5 RFI, we'll be discussing RFQs.

6 We have toll collection that started on
7 November 1 on Segment I-2 over in Chambers County. I do
8 not have a report yet of the status on that. We'll see
9 what our first month comes up with on our revenue
10 collection. I do receive numerous phone calls, i.e., I
11 drove through there and the lights went off, how do I get
12 an EZ Tag, or how do I get a TxTag, and we've been
13 referring them to the TxTag website so that they can
14 acquire those.

15 The re-eval for Segment I-2 to complete that
16 portion is underway through Federal Highways we're
17 awaiting HGAC to approve their new RTP that will include
18 an overpass that is part of the re-eval and that will
19 clear the way for Federal Highways to sign the re-
20 evaluation.

21 Segments E, F-1, F-2 and G are the ones that
22 are of greatest interest to everybody in the metropolitan
23 Houston area. Segment E, as we mentioned, already has
24 construction contracts ongoing, it will be open to traffic
25 in 2013. Segments F-1, F-2 and G, for those the state

1 issued a request for information, an RFI, in June 2011.
2 We solicited feedback, we had a number of firms give us
3 information on how they felt that project should be
4 delivered. We have been considering those options, and
5 today we're going to be looking forward to taking the
6 feedback we got from our RFI respondents and our local
7 stakeholders meetings to go forward to issuing an RFQ and
8 an RFP.

9 We also have Senate Bill 1420 considerations.
10 We have a 1420 committee that will be made up of
11 representatives of the Houston District, representatives
12 of HGAC, of the Harris County Toll Road Authority, the
13 Montgomery County Toll Road Authority. Those entities, I
14 know of two that have been named, Houston District
15 representative being Mr. Mike Alford and the Houston
16 Galveston Area Council has designated Fort Bend County
17 Commissioner James Patterson as the representative for
18 Houston Galveston Area Council. I'm not aware of Harris
19 County Toll Road Authority or Montgomery County Toll Road
20 Authority designating a representative yet, but following
21 me will be Mr. Ed Pensock and he may have additional
22 information regarding that.

23 The RFQ is anticipated to be released tomorrow
24 that will propose delivery of firms submitting
25 qualifications on two delivery models. We will then

1 analyze those, go to a RFP process, proposals are
2 anticipated to be due in August, and then we expect to
3 have a contract for delivery of this model in December of
4 next year and construction to start in early 2013 and to
5 be riding on this road in the middle of 2015.

6 The Grand Parkway Association has been working
7 closely with the new Major Project Office in the Houston
8 area that reports to Mr. Pensock. We've also been working
9 closely with the Houston District, with our partner
10 counties, partner cities, and look forward to continuing
11 that work to deliver this project.

12 With that, I'll be happy to answer any
13 questions.

14 MR. HOLMES: You knew I was going to ask you
15 one, David. Right?

16 MR. GORNET: Yes, sir. If it's only on.

17 (General laughter.)

18 MR. HOLMES: There is a re-eval for a small
19 portion of F-2 that is near 45.

20 MR. GORNET: Yes, sir.

21 MR. HOUGHTON: And can you give us a status on
22 that?

23 MR. GORNET: Certainly. There will be a re-
24 eval for each of those segments. F-1, F-2 and G will all
25 have re-evaluations that are necessary for them because

1 the initial document does not cover all of the detention
2 ponds or where outfall drainage channels are, it's looking
3 solely at where the road would go. So we will be doing
4 re-evals for each of those. Those draft re-evals are
5 being written right now, they will be submitted to Grand
6 Parkway and the Major Project Office for review in January
7 of next year. By the time they get to us through the
8 Environmental Division here and go to Federal Highways, it
9 will be probably April, and we expect Federal Highways
10 then to take three to six months to review and approve
11 those so that by September of next year, in advance of
12 selecting a partner that will be developing this road, we
13 will have the re-evals approved.

14 Likewise, I anticipate a follow-up question to
15 that might be wetlands permits. We are similarly working
16 on the wetlands permits for each of those segments, and
17 those are being done -- they call it a PJD, preliminary
18 jurisdictional determination, wherein we're not going to
19 argue whether this wetland is jurisdictional or not versus
20 this wetland, we'll say they're all wetlands of the U.S.
21 and we will mitigate for those. If we were to take
22 positions of jurisdiction, whether one is jurisdictional
23 or non-jurisdictional, it takes a longer period of time
24 for the Corps than to review that.

25 It can be elevated to the EPA if there is a

1 significant differential, and particularly in Segment F-2
2 there is a large differential. We only have two or three
3 acres of jurisdictional wetlands, or which our initial
4 review indicate is jurisdictional, but we may have 30
5 acres of non-jurisdictional wetlands, and the Corps has
6 indicated that would have to be elevated to the EPA for
7 their concurrence in a determination. So to expedite the
8 wetlands permit process, we will assume that all the
9 wetlands are wetlands and we will mitigate for those.

10 MR. HOLMES: I understand that most of those
11 re-eval processes are sort of in the standard operating
12 procedure, but isn't there a small piece of F-2 that the
13 actual alignment shifted?

14 MR. GORNET: There is a small piece, there's
15 about two miles from I-45 westward affecting only one
16 property owner, and we have already discussed that re-
17 evaluation with FHWA, they have given us favorable
18 feedback on that. We've demonstrated to them, not through
19 final documentation, but demonstrated that we're not
20 impacting additional wetlands nor any other sensitive
21 resources, and they've said since it's affecting just the
22 one property owner, we're not adding length to the road,
23 we're not adding impacts, that they feel that that will be
24 something that they can approve through their regular
25 activities and not have to go back for additional

1 meetings.

2 MR. AUSTIN: I've got a couple of questions,
3 and I'm going to save a lot of mine for when we meet and
4 go over the projects, but just a couple of general
5 questions. When did you open, again, I-2?

6 MR. GORNET: Segment I-2 was opened to traffic
7 in March of 2008.

8 MR. AUSTIN: And when did you start collecting
9 the toll? Right then?

10 MR. GORNET: Tolls just started November of
11 2011.

12 MR. AUSTIN: Okay. So really my question, I
13 was going to say what percent have you been able to see
14 using electronic.

15 MR. GORNET: It is 100 percent electronic toll
16 collection. Records from say this time last year, they
17 were running on that road prior to tolling about 48-
18 50,000 vehicles a week on that road. And again, since
19 they've started the tolling on November 1, I do not have
20 feedback yet on what the new traffic levels are and how
21 many of those are using TxTag or EZ Tag or anything like
22 that.

23 MR. AUSTIN: For those who do not have it, are
24 you using video billing?

25 MR. GORNET: The rules do allow for video

1 billing on that particular stretch of road and those will
2 have to be amended to mirror the rules that are being
3 proposed on the rest of the road.

4 MR. AUSTIN: And with this and kind of the
5 future sections, who is actually going to operate this?

6 MR. GORNET: As of today, TxDOT is operating
7 Segment I-2. Part of the analysis that is ongoing will
8 determine who will operate Segments E, F-1, F-2 and G.
9 Fort Bend County is operating their portion through their
10 primacy that they asserted; they will be operating Segment
11 D and collecting tolls for the overpasses that they are
12 doing. It's possible we could have a private partner
13 design, build and operate and collect the tolls on
14 Segments E, F-1, F-2 and G, or it could be TxDOT. The
15 road will continue to be owned by TxDOT and they will be
16 accountable to report to TxDOT on what's going on, but
17 they would collect those tolls and operate it.

18 MR. AUSTIN: Thank you.

19 MR. HOUGHTON: David, thank you.

20 MR. GORNET: Thank you, gentlemen.

21 MR. HOUGHTON: We've got Ed up next.

22 MR. WILSON: Next up is the interim director of
23 the Texas Turnpike Authority Division, Ed Pensock, to
24 present a report on the issuance and the request for
25 qualifications for the Grand Parkway.

1 MR. PENSOCK: Chairman, commissioners, Phil,
2 good morning. Thank you for the opportunity to be here.

3 I'll give you a quick update and elaborate a
4 little bit more on some of the information that David
5 Gornet just gave you.

6 I'm sorry. For the record, my name is Ed
7 Pensock. I'm the interim director of the Turnpike
8 Division of TxDOT and the interim chief of the Planning
9 and Project Office for the State of Texas.

10 The region has been working very hard through
11 the summer and this fall, as David talked about, through
12 the request for information process and through meetings
13 with a lot of the important community representatives and
14 stakeholders, and through that effort we've come to the
15 point where we are today, and like David said, we
16 anticipate issuing a request for qualifications tomorrow,
17 November 18. And I want to give you a little bit of an
18 update on that request for qualifications because it's
19 kind of a new way of doing things for us, for TxDOT, and
20 it's kind of a unique way of doing things for us so it's
21 kind of special. We're looking forward to seeing how it
22 comes about.

23 This commission authorized the issuance of the
24 request for qualifications in March of 2011. The request
25 for qualifications will anticipate solicitation of

1 qualification statements from teams interested in entering
2 into either a design-build maintenance contract for
3 Segments F-1, F-2 and G, and/or a concession contract
4 which would be those same items: design, build, maintain
5 and add operations to that scope of services.

6 So we anticipate teams submitting qualification
7 statements to us on two separate different business
8 models: one the pure design-build model, the second being
9 the pure concession business model. In doing this, we
10 hope to increase the value to the State of Texas. In
11 considering both business models we think that we're going
12 to allow developer teams to select which model they prefer
13 to operate under, and we hope that we can see some
14 increased competition.

15 A dual model procurement will provide TxDOT and
16 local stakeholders with additional information and
17 validation of the potential value of alternative delivery
18 models, while providing increased opportunity and
19 flexibility for local industry to participate on the
20 project using the different models approach. TxDOT
21 recognizes the need to work closely with industry because
22 this is somewhat of a new approach in the P3 world, in the
23 public private partnership world, so we expect to work
24 closely with industry and get their feedback all along the
25 way.

1 As David mentioned, the RFQ will be published
2 tomorrow. The qualification statements are anticipated to
3 be submitted back to TxDOT in early 2012, and we
4 anticipate issuing a final request for proposals in the
5 spring of 2012. We anticipate receiving those proposals
6 in the summer of 2012, and following evaluation,
7 selection, negotiation and review by the Legislative
8 Budget Board, Office of Attorney General, Federal Highway
9 Administration and others in the fall of 2012, we
10 anticipate entering into a best value contract in the
11 winter of 2012-2013.

12 With that, I'll be happy to answer any
13 questions.

14 MR. HOUGHTON: Any questions?

15 (No response.)

16 MR. WILSON: Item 5 is the award of aviation
17 grants. Aviation Division Director Dave Fulton will
18 present this minute order.

19 MR. FULTON: Thank you, Phil. Commissioners,
20 for the record, my name is Dave Fulton, director of TxDOT
21 Aviation Division.

22 This minute order contains a request for grant
23 funding approval for 13 airport improvement projects. The
24 total estimated cost of all requests, as shown in Exhibit
25 A, is approximately \$5.2 million: approximately \$4

1 million in federal funding, \$800,000 in state funding, and
2 approximately \$400,000 in local funding.

3 A public hearing was held in October of this
4 year. No comments were received. We would recommend
5 approval of this minute order.

6 MR. HOUGHTON: Motion?

7 MR. HOLMES: So moved.

8 MR. AUSTIN: Second.

9 MR. HOUGHTON: All in favor?

10 (A chorus of ayes.)

11 MR. HOUGHTON: Thank you.

12 Thanks, Dave.

13 MR. FULTON: Thank you.

14 MR. WILSON: Item 6 is the final adoption of
15 administrative rules. The first will be presented by
16 General Counsel Bob Jackson.

17 MR. JACKSON: Bob Jackson, general counsel.

18 State law requires state agencies to sunset its
19 advisory committees at least once every four years. The
20 commission has chosen to sunset its advisory committees
21 every two years to coincide with the end of a legislative
22 session. You proposed amendments to your advisory
23 committee rules where you were retaining all your advisory
24 committees except for the Trans-Texas Corridor Committee
25 and ITS steering committees which can be handled through

1 MPOs or project advisory committees.

2 No comments were received on these rule
3 revisions. Recommend adoption of this minute order which
4 will provide for final adoption of these rule changes.

5 MR. HOLMES: So moved.

6 MR. AUSTIN: Second.

7 MR. HOUGHTON: All in favor?

8 (A chorus of ayes.)

9 MR. WILSON: Bob, please continue with 6a(2).

10 MR. JACKSON: Later in this agenda you will be
11 asked to propose some new environmental review rules. To
12 make room for those rules, we needed to move our public
13 participation rules into a new chapter. You proposed
14 doing that a couple of months ago, no public comments were
15 received, recommend final adoption of this minute order.

16 MR. HOLMES: So moved.

17 MR. AUSTIN: Second.

18 MR. HOUGHTON: All in favor?

19 (A chorus of ayes.)

20 MR. HOUGHTON: Thank you.

21 MR. WILSON: Item 6a(3) is final adoption of a
22 rule related to the Transportation Enhancement Program.
23 The director of the Design Division, Mark Marek, will
24 present this one.

25 MR. MAREK: For the record, my name is Mark

1 Marek and I am the director of TxDOT's Design Division.

2 Item 6a(3) relates to the department's rules
3 concerning transportation enhancement activities found in
4 Title 43 of the Administrative Code in Chapter 11. The
5 purpose of the rule revisions was to recognize recent
6 changes to the department rules regarding planning and
7 development of transportation projects specifically
8 relating to provisions which allocate Transportation
9 Enhancement Program funds to metropolitan planning
10 organizations operating in transportation management
11 areas. These changes necessitated a need to modify the
12 process for selecting future projects under the
13 Transportation Enhancement Program.

14 In addition, there was a need to clarify and
15 refine the existing language to improve the effectiveness
16 of the program. These revisions presented an opportunity
17 to reorganize the sections so that the new rules would be
18 easier to read. Therefore, we repealed the sections
19 relating to the existing program and simultaneously
20 proposed new sections.

21 Barry Cogburn, director of TxDOT's Landscape
22 and Enhancement Section, put together an informal group to
23 represent a variety of stakeholders with interest in the
24 Transportation Enhancement Program. Members of this work
25 group included representatives from the Houston Galveston

1 Area Council, the North Central Texas Council of
2 Governments, Bike Texas, a rural county judge, and the
3 Federal Highway Administration. This committee worked
4 with department staff to give informal advice, counsel and
5 input on the development of the draft rules proposed that
6 were accepted by the commission for proposed adoption in
7 August of 2011.

8 The open comment period ended on October 11, we
9 received no comments. This concludes my presentation for
10 final rule adoption. Staff recommends approval of this
11 minute order.

12 MR. HOLMES: So moved.

13 MR. AUSTIN: Second.

14 MR. HOUGHTON: All in favor?

15 (A chorus of ayes.)

16 MR. HOUGHTON: Thanks, Mark.

17 MR. WILSON: Next up, the director of the
18 Traffic Operations Division, Carol Rawson, will present
19 the next two rules for final adoption.

20 MS. RAWSON: Good morning. For the record, I'm
21 Carol Rawson, director of the Traffic Operations Division.

22 The minute order before you proposes final
23 adoption of our existing rules to adopt the 2011 version
24 of the Texas Manual on Uniform Traffic Control Devices by
25 reference.

1 Texas law requires the department to adopt a
2 traffic control device manual. This manual must be in
3 substantial conformance with the federal version. The
4 purpose of this manual is to ensure that all signs,
5 signals and pavement markings are applied uniformly across
6 the state. Once adopted, all jurisdictions, including
7 TxDOT, will be required to follow the provisions of the
8 manual.

9 The proposed amendment was published with a 60-
10 day public comment period in the July 15 edition of the
11 Texas Register. The department also held a public hearing
12 on August 29. We received approximately 100 written and
13 verbal comments from 14 individuals related to various
14 aspects of the new manual. Those comments and the
15 department's response are summarized in the adoption
16 preamble.

17 I would also like to note that the FHWA has
18 reviewed the proposed Texas manual and determined that it
19 is in substantial conformance with the national manual.
20 Staff recommends approval of this minute order.

21 MR. UNDERWOOD: So moved.

22 MR. MEADOWS: Second.

23 MR. HOUGHTON: All in favor?

24 (A chorus of ayes.)

25 MR. HOUGHTON: Thanks, Carol. You have more to

1 go, don't you.

2 MS. RAWSON: I've got one more. This is item
3 6a(5).

4 Once again for the record, I'm Carol Rawson,
5 director of the Traffic Operations Division.

6 The minute order proposes final adoption of
7 amendments to the existing rules for the department's
8 Memorial Sign Program for Victims of Impaired Driving to
9 implement the provisions of two bills from the 82nd
10 Legislature. House Bill 1486 requires the department to
11 extend the time period that a sign would be installed for
12 a victim of impaired driving from one to two years. House
13 Bill 2469 created a new signing program for persons killed
14 while riding or operating a motorcycle. This program will
15 operate very much like the current Victims of Impaired
16 Driving Memorial Sign Program, although, as per statute,
17 the signs will be installed for a period of one year.

18 The proposed revisions were published in the
19 September 9 edition of the Texas Register and we received
20 no comments. Staff recommends approval of this minute
21 order.

22 MR. HOUGHTON: Motion?

23 MR. UNDERWOOD: So moved.

24 MR. AUSTIN: Second.

25 MR. HOUGHTON: All in favor?

1 (A chorus of ayes.)

2 MR. HOUGHTON: Thanks, Carol.

3 MS. RAWSON: Thank you.

4 MR. WILSON: The last rule up for final
5 adoption is item 6a(6) relating to Regional Mobility.
6 Authorities. General Counsel Bob Jackson will present.

7 MR. JACKSON: Bob Jackson, general counsel.

8 The commission is required by statute to
9 approve the creation of a regional mobility authority.
10 When it does so, it approves the initial board structure
11 for an RMA. There was concern expressed by an RMA that
12 the commission may have continuing jurisdiction over the
13 structure of an RMA's board of directors. It was our
14 opinion that our rules did not provide for that, but we
15 were asked by several RMAs to clarify the rules. We did.

16 We received one public comment from an attorney
17 representing several RMAs that approved our rule. No
18 comments were received in opposition to the rule.
19 Recommend adoption of the minute order.

20 MR. HOUGHTON: And currently we do have that
21 approval of the initial board. Correct?

22 MR. JACKSON: Yes, you do.

23 MR. HOUGHTON: Why would we want to give that
24 up?

25 MR. JACKSON: No. You're not giving it up, you

1 still will approve the initial board structure. We're
2 clarifying that they can change their structure down the
3 road and they do not have to come to the commission for
4 approval.

5 MR. HOUGHTON: Structure.

6 MR. JACKSON: Structure.

7 MR. HOUGHTON: But the chair is still appointed
8 by the governor.

9 MR. JACKSON: Yes, sir.

10 MR. HOUGHTON: Okay.

11 MR. AUSTIN: I have one comment I will make.
12 Other than the chair, the other board members would be
13 retained -- the authority to appoint the other board
14 members will be retained by the county courts.

15 MR. JACKSON: Yes, sir.

16 MR. AUSTIN: I think that's a great
17 opportunity, other than the initial board going in, to get
18 the right people that can be advocates for their county to
19 really work with the projects. And I know, looking at
20 this I saw some of the comments beforehand, it seems to
21 have worked pretty well. I don't know where some of the
22 confusion really came from.

23 MR. HOUGHTON: What was the confusion? I'm
24 missing something.

25 MR. JACKSON: The Hidalgo County Regional

1 Mobility Authority changed their structure and there was
2 concerns whether they did so consistent with their own by-
3 laws and consistent with the commission's minute order and
4 consistent with our rules. They asked for an attorney
5 general opinion and the attorney general has recently
6 opined that it was all good and our rules were okay. But
7 this makes it perfectly clear that we do not have
8 continuing jurisdiction nonetheless.

9 MR. AUSTIN: And some of the restrictions for
10 the board members, no TxDOT contracts, you can't be a
11 municipal employee, all those rules stay in place.

12 MR. JACKSON: Yes, sir.

13 MR. HOUGHTON: Is that a rule or is that part
14 of the rules?

15 MR. JACKSON: Statute requires us to adopt
16 rules governing conflict of interest and ethics for an
17 RMA, its executive director and its board, and we have
18 done so.

19 MR. HOUGHTON: And who monitors those rules as
20 to the ethics issues?

21 MR. JACKSON: As to the ethics issues.

22 MR. HOUGHTON: Yes, conflicts issues.

23 MR. JACKSON: Every once in a while we are
24 advised about a potential issue at an RMA and we respond
25 to it.

1 MR. HOUGHTON: Okay.

2 MR. AUSTIN: And each of the RMAs have put
3 together, as part of the legislative session, the internal
4 compliance program, much like what TxDOT has done as well,
5 to disclose.

6 MR. JACKSON: That's a great point. The
7 commission has also adopted a rule relatively recently
8 requiring RMAs to have an internal compliance program, and
9 they have all done so.

10 MR. HOUGHTON: They have.

11 MR. JACKSON: Yes, sir.

12 MR. HOUGHTON: Great. That's good news.

13 Motion?

14 MR. AUSTIN: So moved.

15 MR. UNDERWOOD: Second.

16 MR. HOUGHTON: All in favor?

17 (A chorus of ayes.)

18 MR. HOUGHTON: Thanks.

19 MR. WILSON: Item 6b contains two proposed
20 rules up for adoption. First is a rewrite of the
21 Environmental review process. Mark Marek will present
22 this as interim director of the Environmental Affairs
23 Division.

24 MR. MAREK: For the record, my name is Mark
25 Marek. I am the interim director of TxDOT's Environmental

1 Affairs Division.

2 This agenda item concerns the department's
3 proposed rules on the preparation of an environmental
4 review document for a proposed transportation project.
5 The 82nd Texas Legislature, in passing Senate Bill 548,
6 Senate Bill 1420 and House Bill 630, enacted
7 Transportation Code 201, Subchapter I-1 setting forth new
8 requirements for the environmental review of highway
9 projects and requiring the department to adopt rules
10 implementing Subchapter I-1.

11 For highway projects, the department must
12 complete the technical review of a draft environmental
13 document by specified deadlines. The new law also
14 authorizes a local government to be the project sponsor
15 for a project at their optional request. The department
16 expects these rules to result in a more timely
17 environmental review process and more efficient and
18 effective collaboration with local government sponsors of
19 highway projects.

20 The proposed rulemaking also makes a number of
21 improvements in the existing environmental review process.
22 For example, the requirements for blanket categorical
23 exclusions and for project re-evaluations have been
24 simplified. Flexibility has been placed within these
25 proposed rules to allow districts, regions or divisions to

1 prepare environmental review documents. Further,
2 flexibility has been added to allow the approval of an
3 environmental document at the district, region or division
4 level, as decided by the executive director, for
5 particular project types or for broader project
6 classifications.

7 The department believes this will allow it to
8 better place resources, to maximize the quality of
9 environmental reviews, enhance the efficiency of the
10 process, and ultimately improve the timeliness of project
11 delivery.

12 You will recall that a public hearing was held
13 on these matters at the September 2011 commission meeting.
14 In response to the five commenters, you directed staff to
15 meet with the commenters to get a better understanding of
16 their issues. Since that time, staff has conducted a
17 teleconference with the state MPOs and conducted two
18 meetings with several counties and RMAs. We understand
19 their strong desire to expedite project development and
20 put transportation dollars under construction.

21 We want to thank these groups for spending
22 their own time to review some of the initial background
23 work and provide us with input. Specifically, Williamson
24 County Commissioners Cynthia Long and Valerie Covey spoke
25 with us on several occasions to assist us in this complex

1 rule development. These leaders fully understand what it
2 takes to follow the federal regulations and expedite and
3 advance transportation projects in some of the most
4 environmentally sensitive areas of the state. We expect
5 to continue to seek their counsel during this rule review
6 period and going forward as we develop procedures
7 internally to support these proposed rules.

8 I think I would also be remiss if I didn't
9 mention the support of the Office of General Counsel in
10 developing these rules, Rich O'Connell and Patrick Lee.
11 These are extremely complex rules, they have a large legal
12 component in them with respect to federal and state
13 regulations. We also had an in-house work group,
14 supported by Brandy Houston from the Environmental Affairs
15 Division, and these groups have worked together to bring
16 these rules to this point in the process.

17 We also propose to hold a public hearing on
18 these proposed rules, tentatively scheduled for January 9
19 at the TxDOT Riverside complex here in Austin. Also, we
20 propose to have an extended public comment period.

21 This concludes my presentation. Members of
22 department staff, particularly Rich O'Connell, are here
23 with me this morning and are prepared to answer any
24 additional questions you might have. Staff recommends
25 approval of this minute order.

1 MR. HOUGHTON: We have one speaker signed up.
2 Michael Heiligenstein, CTRMA. Mike, where are you?

3 MR. HEILIGENSTEIN: Good morning, Chairman and
4 Commission. Thank you.

5 Welcome your new commissioner as well as your
6 director. Look forward to working with both of you.

7 My name is Mike Heiligenstein. I'm the
8 executive director of the CTRMA, and to my either side is
9 Cynthia Long and Valerie Covey. They could not be here
10 today but they wanted to make sure that you knew that I
11 was also speaking on their behalf, and it will be shorter
12 as a result.

13 I'm here today to express my appreciation to
14 the commission and to TxDOT staff for including the
15 various stakeholders in the process by which the draft
16 rules that you are considering today were developed. At
17 the September meeting where I spoke, the need for input
18 was stressed, and at the time it seemed as though that the
19 process might be proceeding without that input from your
20 local stakeholders. In response, you directed your staff
21 to implement a thoughtful process to include all these
22 stakeholders, a direction which your staff has made a
23 concerted effort to follow.

24 Our representatives have been working with your
25 staff over the past two months and we are very much

1 appreciative of the serious consideration they've given to
2 our input. As a result, we have made what appears to be
3 significant progress in addressing issues raised by the
4 early draft rules, and while there are additional issues
5 that we hope to resolve, the list is a lot smaller than it
6 was in September.

7 So my only request at this point is that we
8 continue that collaborative process and make sure that we
9 deliver back to this commission a product that we can all
10 be proud of and that we can enhance the environmental
11 review process, make it more efficient. I look forward to
12 coming back again and being able to make that comment.

13 And also, I want to thank specifically
14 Commissioner Meadows, and all of you, thanks for your
15 leadership, your support in making this a proactive,
16 productive and collaborative process, and thank you for
17 your time.

18 MR. HOUGHTON: Thank you, Michael.

19 Any questions, comments?

20 MR. MEADOWS: I'd just like to express my
21 appreciation and to the Williamson County commissioners
22 for engaging in the discussion because, you know, but for
23 those comments, which, in fact, launched a real genuine
24 outreach effort on the part of our staff, and I've got to
25 complement our staff as well for engaging the stakeholders

1 across the state as we begin to develop these rules that
2 are so important.

3 Obviously, the given of the discussion was that
4 we wanted to make sure that our rules are in complete
5 compliance and consistent with all applicable rules,
6 regulation and law, but at the same time, the overarching
7 goal, that being the given, is that these rules are
8 efficient, they are simple and they allow projects to be
9 expedited, and that really is the goal, and I think
10 everybody embraced that and I feel like the product, from
11 the input that I'm getting and the briefing that we've had
12 from staff, that we've accomplished that goal.

13 And again, I've got to express our appreciation
14 to you and the Williamson County commissioners for coming
15 forward and bringing this issue to our attention.

16 MR. HEILIGENSTEIN: Well, appreciate that, and
17 I'll take that word back to them.

18 MR. MEADOWS: Thank you.

19 MR. HOLMES: Mike, before you leave the podium,
20 are you requesting that we approve these as they're
21 written now?

22 MR. HEILIGENSTEIN: I think we're still working
23 on some aspects of those and we will make sure that final
24 product has all of that input.

25 MR. HOLMES: So close but not quite there.

1 MR. HEILIGENSTEIN: That's right. Thank you.

2 MR. MEADOWS: Close.

3 MR. AUSTIN: Wouldn't we be better waiting one
4 more month to come back and get those final? Would that
5 hold it up?

6 MR. HOUGHTON: Bob Jackson, I want to ask you a
7 question because I don't want to get ahead of myself, but
8 your item next on rule review would be, it seems to me, an
9 appropriate vehicle to continue the process of the
10 environmental rules, including the modernization committee
11 that we have now established.

12 MR. JACKSON: Well, there will be an intense
13 continual review of these rules as we implement them over
14 quite a period of time. This is new, this is
15 comprehensive, and this will be intense for a lot of us.
16 We have a statutory deadline, we have to adopt these rules
17 by March, so we had hoped to do these last month but we
18 want to get them as close to perfect as we could to where
19 everybody was satisfied. We're almost there but we really
20 need to propose these now and we will continue to work
21 with all the stakeholders with the intent of making them
22 perfect when we bring them back to you after the extended
23 public comment period.

24 MR. AUSTIN: For final adoption.

25 MR. JACKSON: Yes, sir.

1 MR. HOUGHTON: So this is for the public
2 comment period.

3 MR. JACKSON: Yes.

4 MR. HOUGHTON: This is not adopting the rules.

5 MR. AUSTIN: Not the final adoption.

6 MR. HOUGHTON: Okay. So we're going out for
7 public comment. But I would advise and implore the
8 administration to look at this as a part of the
9 modernization process that we're going through now on
10 these environmental rules.

11 MR. JACKSON: Yes. We've worked very closely
12 with the modernization team on the environmental process.

13 MR. HOUGHTON: Okay. So what we're approving
14 now is the public comment period.

15 MR. JACKSON: Yes, sir.

16 MR. AUSTIN: I'll make a motion we move
17 forward.

18 MR. HOUGHTON: Wait a minute.

19 MR. HOLMES: One quick question, Bob. Public
20 comment would allow further modifications to the rules
21 that we have before us.

22 MR. JACKSON: Yes, sir, absolutely.

23 MR. AUSTIN: So moved.

24 MR. HOLMES: With that I would second the
25 motion.

1 MR. HOUGHTON: Hold on. Mark.

2 MR. MAREK: Mr. Heiligenstein came up and said
3 he does favor going ahead with the proposed rules for the
4 public comment period.

5 MR. MEADOWS: And we'll continue, just by point
6 of clarification, to work with our stakeholders through
7 the public comment period as well. We're not done. We've
8 just made a lot of progress and there's been good
9 communication.

10 MR. MAREK: Yes, Commissioner.

11 MR. MEADOWS: Okay.

12 MR. HOUGHTON: Glad for the clarification.

13 MR. MAREK: Again, staff recommends approval of
14 this proposed adoption minute order.

15 MR. HOUGHTON: Now.

16 MR. AUSTIN: So moved.

17 MR. HOLMES: Second.

18 MR. HOUGHTON: All in favor?

19 (A chorus of ayes.)

20 MR. HOUGHTON: Okay. Thank you, Mark. Thanks
21 for the clarification, Mark.

22 MR. WILSON: Finally, item 6b(2) is proposed
23 adoption of rules relating to the design-build process,
24 presented by the interim director of the Turnpike
25 Authority Division, Ed Pensock.

1 MR. PENSOCK: Good morning. Ed Pensock, again,
2 interim director of the Turnpike Division of TxDOT.

3 Item 6b(2) proposes the adoption of New
4 Sections 9.15 to 9.155 concerning design-build contracts
5 to prescribe the procurement process to be followed by the
6 department for design-build contracts and conditions on
7 private participation on those contracts.

8 Transportation Code Chapter 223, Subchapter F,
9 Senate Bill 1420 authorizes the department to enter into
10 in each fiscal year up to three design-build contracts for
11 highway projects, each with a construction cost estimate
12 of \$50 million or more. The bill prescribes requirements
13 for entering into those contracts.

14 The proposed sections prescribe the procurement
15 process to be followed by the department for the contract
16 and the conditions on private participation in those
17 design-build contracts. The sections prescribe
18 requirements for qualification submittals and proposals
19 submitted, they address the manner by which the department
20 intends to conduct those procurements, they address
21 certain responsibilities of the department and of the
22 private entities submitting proposals, they describe
23 certain protest procedures, and they describe certain
24 ethical standards of conduct and rules of contact.

25 Comments on the proposed amendments will be

1 accepted until 5:00 p.m. on January 2. Staff recommends
2 your adoption of this minute order.

3 MR. HOUGHTON: Questions? Motion?

4 MR. UNDERWOOD: So moved.

5 MR. HOLMES: Second.

6 MR. HOUGHTON: All in favor?

7 (A chorus of ayes.)

8 MR. HOUGHTON: Thanks, Ed.

9 MR. WILSON: Item 6c is the final rule-related
10 item. General Counsel Bob Jackson will present this
11 minute order relating to the periodic review of the
12 department's administrative rules.

13 MR. JACKSON: Bob Jackson, general counsel.

14 State law requires state agencies to re-adopt
15 their rules at least every four years, and prior to re-
16 adopting consider whether the reason for each rule
17 continues to exist. We asked the public to comment on
18 about a third of the commission's rules, asking them if
19 the rules should continue to exist. We received no public
20 comments.

21 This minute order will re-adopt these rules so
22 they can continue for the next four years. Recommend
23 adoption of the minute order.

24 MR. HOLMES: So moved.

25 MR. UNDERWOOD: Second.

1 MR. HOUGHTON: All in favor?

2 (A chorus of ayes.)

3 MR. HOUGHTON: Thank you, Mr. Jackson.

4 MR. WILSON: Moving to item 7, I'll ask the
5 interim director of the Internal Compliance Office, Angie
6 Parker, to make the monthly report on the department's
7 ICP.

8 MS. PARKER: Good morning. I'm Angie Parker,
9 interim director of the Internal Compliance Office.

10 The ICP Office is responsible for oversight and
11 coordination for all investigations occurring on
12 department property or involving department employees.
13 The ICP Office received 16 complaints during the month of
14 October, and a total of 33 investigations were closed
15 during the month. The allegations in six of the
16 complaints were substantiated and appropriate action was
17 taken.

18 The Human Resources Division and the Audit
19 Office also notify the ICP Office when an investigation is
20 initiated or completed. A total of eleven investigations
21 were initiated by those offices during the month of
22 October, and four investigations were closed. The
23 allegations in two of the cases were substantiated and
24 appropriate action was taken.

25 That concludes my report, and I'll be happy to

1 answer any questions.

2 MR. HOLMES: Any questions? Is there a motion?

3 MS. PARKER: There's no action required, just a
4 report.

5 MR. WILSON: Just a report.

6 MR. HOUGHTON: No action required.

7 MS. PARKER: Thank you very much.

8 MR. WILSON: Thank you.

9 Item 8 concerns the issuance of a request for
10 qualifications for the project known as the Horseshoe in
11 downtown Dallas. Interim director of the Texas Turnpike
12 Authority Division, Ed Pensock, will explain this minute
13 order.

14 MR. PENSOCK: Ed Pensock, TxDOT.

15 Item 8 provides for the commission's
16 concurrence with the election of Michael Morris as the
17 chair of the I-35E Managed Lane Project SB 1420 Committee.

18 Texas Administrative Code 27.92(c) requires
19 commission concurrence to the I-35E Managed Lane Project
20 SB 1420 Committee's election of a chair and a vice chair.
21 On November 10, 2011, the committee met and elected
22 Michael Morris of the North Central Texas Council of
23 Governments as the chair of the committee.

24 The department and local stakeholders are
25 currently analyzing options for the finance and delivery

1 of the I-35E Managed Lanes Project and that will require
2 the formation of an SB 1420 committee for the project.
3 I-35E Managed Lane Project in Dallas and Denton counties
4 from Interstate 635 to US 380 will replace functionally
5 obsolete deteriorating infrastructure, as well as add
6 capacity for the project to address future increases in
7 traffic volume.

8 Staff recommends your acceptance of this minute
9 order.

10 MR. MEADOWS: I have one question, really, and
11 it's a question for Bob Jackson.

12 Bob, there's been a question raised about what
13 are the criteria or qualifications by which we are able to
14 determine the appropriateness for someone to serve in a
15 leadership position on a 1420 committee, and I'm not
16 looking for an answer at all now, I'm just saying could we
17 have a report back. Because this is going to come up in
18 the future, you know, does the person have to be an
19 employee of one of the designated by statute stakeholders
20 that are represented, or could they be a designee of that
21 entity.

22 And that's the basic question, or I could
23 elaborate further after the meeting. But I just think
24 it's something that we would like to know as a commission
25 as we address the formation of these committees, and more

1 importantly or appropriately at this point, the leadership
2 of those 1420 committees in the future. Maybe next month
3 you could come back and let us know.

4 MR. JACKSON: Yes, sir. I understand, and
5 within the month we'll have an answer for you.

6 MR. MEADOWS: Okay. Earlier I saw one member
7 of this 1420 committee present. I just want to make sure
8 everybody understands the question we're asking. So John
9 Polster is here, you understand the question. Thank you
10 for being here, John.

11 MR. PENSOCK: Again, staff recommends your
12 acceptance of this minute order.

13 MR. HOUGHTON: Motion?

14 MR. UNDERWOOD: So moved.

15 MR. HOLMES: Second.

16 MR. HOUGHTON: All in favor?

17 (A chorus of ayes.)

18 MR. HOUGHTON: Thanks.

19 MR. WILSON: Item 9 is a minute order approving
20 the department's option to purchase the Building 118 here
21 in the Riverside complex. Director Uly Flores will
22 present this item.

23 MR. FLORES: Good morning. For the record, my
24 name is Uly Flores. I'm director of Facilities Management
25 for the Maintenance Division.

1 This minute order authorizes the department,
2 through the Texas Facilities Commission, to exercise its
3 option to purchase under the lease with option to purchase
4 contract to pay in full the bond obligation for Building
5 118 here at our Riverside Campus. This minute order also
6 authorizes the department to accept the deed for the
7 building from TFC, and it authorizes the executive
8 director to enter into an assignment agreement with the
9 TFC to assume all rights and obligations for the ground
10 leases that continue through 2026.

11 The department will save about \$240,000 in
12 interest by paying early and will gain full control and
13 management of its buildings which, in turn, will also
14 provide the department full control, long-term control and
15 planning options for the entire Riverside Campus.

16 Staff recommends approval.

17 MR. HOUGHTON: Questions? Motion?

18 MR. HOLMES: How long are the ground leases?

19 MR. FLORES: The one for Building 118 goes
20 through 2026.

21 MR. HOLMES: And the balance of the complex?

22 MR. FLORES: Building 150 and 200 goes through
23 2022.

24 MR. HOLMES: All under the same fee ownership?

25 MR. FLORES: No. Different owners, different

1 landowners.

2 MR. AUSTIN: Do we have the first right of
3 refusal to purchase the ground lease?

4 MR. FLORES: We have a ground lease with
5 several owners, but at the end of the lease term either we
6 can extend the lease beyond the 2022 or 2026, or we need
7 to make arrangements to be out before then, but there is
8 no option.

9 MR. HOUGHTON: Any other questions of Uly?
10 Motion?

11 MR. UNDERWOOD: So moved.

12 MR. MEADOWS: Second.

13 MR. HOUGHTON: All in favor?

14 (A chorus of ayes.)

15 MR. HOUGHTON: Thanks, Uly.

16 MR. WILSON: Moving to item 10, the director of
17 the Finance Division, Brian Ragland, will present a minute
18 order amending an order passed in 1986 relating to road
19 development in southern Travis County.

20 MR. RAGLAND: Thank you. For the record, I'm
21 Brian Ragland, director of the Finance Division.

22 This minute order rescinds a portion of a
23 minute order approved in 1986. A commitment was made by
24 Travis County for some work on FM 1826 but a portion of
25 that project will not be constructed, so this minute order

1 allows the county to release some committed bond funds
2 they have to use for other purposes. And staff recommends
3 your approval.

4 MR. HOUGHTON: Questions? Motion?

5 MR. AUSTIN: So moved.

6 MR. HOLMES: Second.

7 MR. HOUGHTON: All in favor?

8 (A chorus of ayes.)

9 MR. WILSON: The next item is for the award of
10 contracts for maintenance and department building
11 construction and highway construction contracts, and
12 Construction Division's Ken Barnett will present these two
13 items.

14 MR. BARNETT: Good morning. For the record,
15 Ken Barnett, the interim director of the Construction
16 Division.

17 Item 11a(1) is the consideration of award or
18 rejection of Highway Maintenance and Department Building
19 Construction contracts let on November 1 and 2. We
20 present 30 projects today. The average number of bidders
21 was 4.2; the low bid value was \$49,536,404. We had an
22 overall underrun of 6.07 percent. Staff is recommending
23 award of all maintenance projects.

24 MR. HOUGHTON: Motion?

25 MR. HOLMES: So moved.

1 MR. UNDERWOOD: Second.

2 MR. HOUGHTON: All in favor?

3 (A chorus of ayes.)

4 MR. HOUGHTON: Thank you.

5 MR. WILSON: Item 11c is the award of a
6 maintenance contract to the second lowest bidder. Ken
7 will also present this minute order.

8 MR. BARNETT: Item 11c is for the consideration
9 of award of rejection of a highway maintenance contract to
10 the second lowest bidder for a project in Upshur County in
11 the Atlanta District.

12 The project was let on October 12, 2011. The
13 apparent low bidder, KNR Contractors, they failed to enter
14 the contract with the department. The second lowest
15 bidder, HX Farms, has agreed to perform the work at the
16 lowest bidder's unit price of \$292,800. Our rules do
17 provide for us to do this for maintenance contracts less
18 than \$300,000, and we do believe there is a need to
19 expedite this project to address safety concerns, so staff
20 is recommending approval of this minute order.

21 MR. HOLMES: So moved.

22 MR. UNDERWOOD: Second.

23 MR. HOUGHTON: All in favor?

24 (A chorus of ayes.)

25 MR. HOUGHTON: Ken, where are we?

1 MR. BARNETT: Should be on 11b, sir.

2 MR. HOUGHTON: 11b?

3 MR. BARNETT: Yes, sir.

4 MR. HOUGHTON: Okay.

5 MR. BARNETT: Item 11b is for the consideration
6 of award or rejection of Highway and Transportation
7 Building Construction contracts let on November 1 and 2.
8 We present 38 projects today. The average number of
9 bidders was 4.6, with a low bid value of \$174,108,173.
10 This month there is only one project in mobility for \$7
11 million, and the remaining projects are generally
12 classified as preservation. We had an overall underrun of
13 7-1/2 percent. Staff is recommending award of all the
14 construction projects with the inclusion of the following
15 two projects.

16 We did have one large project this month, \$64
17 million where someone was declared non-responsive. I
18 bring it up because this is an extremely rare event. It's
19 a large project and the one individual was declared non-
20 responsive and his bid would have been \$4 million less
21 than what we are awarding the contract for. However, by
22 our rules we do have to award to the lowest responsive
23 bidder and staff is recommending award to the lowest
24 responsive bidder.

25 We had another project in El Paso where we only

1 had one bidder. This is a polymer concrete bridge deck
2 overlay in El Paso, it does have a 15-year warranty
3 requirement on it. We have several contractors that are
4 protesting the award of this contract because they feel
5 this is a sole source procurement and we work maybe too
6 closely with one of those vendors. We clearly do not
7 believe that to be the case. Anyone could have bid this
8 project. We normally work with vendors, this is not
9 unusual, and anyone could have gotten this warranty bond
10 if they have the backing to do that. So staff is
11 recommending award of this contract so we can go forward
12 and see if this 15-year warranty is a good asset
13 preservation tool for the department.

14 MR. HOUGHTON: Let me have you describe the
15 first non-responsive bid. It is on what?

16 MR. BARNETT: It is on a project in the
17 Beaumont District, it's for I-10 over the Neches River.
18 We had one particular bidder submit us a bid for \$60
19 million. With every bid everyone has to give us a
20 proposal guarantee, in this particular case they gave us a
21 check. We have rules in place that have been in place
22 since about 2000 that say checks cannot be more than 90
23 days old. This particular check was 106 days old,
24 therefore, we declared that bid non-responsive.

25 MR. HOUGHTON: Is the project a replacement of

1 a bridge or upgrade of a bridge?

2 MR. BARNETT: Yes, sir, it's replacement of a
3 bridge.

4 MR. HOUGHTON: On I-10. Critical.

5 MR. BARNETT: Critical infrastructure, yes,
6 sir.

7 MR. HOUGHTON: Any other questions?

8 MR. HOLMES: Yes. Ken, I understood that in
9 addition to the \$4 million lower bid that there were also
10 some design issues that had they been initially in our
11 plans would have saved another million or two or three.
12 Can you speak to that?

13 MR. BARNETT: I'm not aware of all of those. I
14 did discuss some issues with the project with the district
15 prior to the letting that that is a possibility. We do
16 believe what was presented at the letting was okay, but I
17 do understand there was some issues during the project
18 that I'm aware of but there may be some others that I'm
19 not aware of.

20 MR. HOLMES: I was led to believe that there
21 might be an additional \$2 million in savings on a redesign
22 in addition to the fact that, as I also understood, that
23 we phoned on that check and the bank said it was good but
24 our rules didn't give us the flexibility to go forward.

25 So Mr. Chairman, I would move approval with the

1 exception of bridge project 1102477, the Beaumont project,
2 to go back and have it redesigned and make sure that we
3 have the most efficient and appropriate design and then
4 rebid it.

5 MR. BARNETT: Okay, sir. We will make that
6 change to the minute order and we will touch base with the
7 district.

8 MR. HOLMES: You probably better get a second
9 first.

10 MR. HOUGHTON: We haven't gotten it approved
11 quite yet.

12 MR. HOLMES: I appreciate the expression of
13 confidence, Ken.

14 (General laughter.)

15 MR. BARNETT: We will certainly get with the
16 district, if the commission chooses to go this way, and
17 have that project redesigned to address any issues that
18 may be in it.

19 MR. MEADOWS: Second.

20 MR. HOUGHTON: All in favor?

21 (A chorus of ayes.)

22 MR. HOUGHTON: Passes.

23 MR. WILSON: Next up is item 12, the eminent
24 domain proceedings. John Campbell, director of the Right
25 of Way Division, will present this minute order.

1 MR. CAMPBELL: Good morning. For the record,
2 my name is John Campbell, director of the Right of Way
3 Division.

4 I'd like to present for your consideration
5 today item 12 which authorizes the filing of condemnation
6 proceedings necessary to progress the acquisition of three
7 non-controlled and 25 controlled access parcels by
8 exercise of eminent domain. The staff recommends your
9 approval of the minute order, and I again remind you of
10 the special opportunity for a special form of the minute
11 order. I'm happy to answer any questions.

12 MR. AUSTIN: Mr. Chairman, I'd be privileged to
13 make a motion. I move the Texas Transportation Commission
14 authorize the Texas Department of Transportation to use
15 the power of eminent domain to acquire the properties
16 described in the minute order set forth in the agenda for
17 the current month for consideration for reconstruction,
18 maintenance, widening, straightening or extending the
19 highway facilities listed in the minute order as a part of
20 the state highway system, and that the first record vote
21 applies to all units of property to be condemned.

22 MR. MEADOWS: Second.

23 MR. HOUGHTON: All in favor?

24 (A chorus of ayes.)

25 MR. WILSON: Item 14 contains the routine

1 minute orders, including donations, release of access
2 rights, right of way dispositions and donations, finance,
3 and establishment of speed zones. Commissioners,
4 department staff recommends the adoption of these minute
5 orders and we will be happy to answer any questions
6 regarding individual items.

7 MR. HOLMES: So moved.

8 MR. UNDERWOOD: Second.

9 MR. HOUGHTON: All in favor?

10 (A chorus of ayes.)

11 MR. HOUGHTON: At this time we will recess into
12 executive session under Government Code Section 551.074 to
13 discuss the creation of a performance plan for the
14 executive director. For the record, the time is 10:45.
15 We now recess into executive session.

16 (Whereupon, at 10:45 a.m., the meeting was
17 recessed, to reconvene this same day, Thursday, November
18 17, 2011, following conclusion of the executive session.)

19 MR. HOUGHTON: The meeting of the Texas
20 Transportation Commission is reconvened. The time is
21 11:11. The commission has concluded its executive
22 session, and there is no other business before the
23 commission. Is there any? Anybody signed to speak in
24 open comment period?

25 MR. WILSON: No.

1 MR. HOUGHTON: None. Is there a motion?

2 MR. HOLMES: Move to adjourn.

3 MR. UNDERWOOD: Second.

4 MR. HOUGHTON: All in favor?

5 (A chorus of ayes.)

6 MR. HOUGHTON: The time is 11:12, meeting
7 adjourned.

8 (Whereupon, at 11:12 a.m., the meeting was
9 concluded.)

C E R T I F I C A T E

MEETING OF: Texas Transportation Commission

LOCATION: Austin, Texas

DATE: November 17, 2011

I do hereby certify that the foregoing pages,
numbers 1 through 91, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Nancy H. King before the
Texas Transportation Commission.

11/28/2011

(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731